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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,356	12/05/2003	Paul L. Hickman	13915.74.1.3	8257
22913	7590	07/01/2008	EXAMINER	
WORKMAN NYDEGGER 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			RICHMAN, GLENNE	
			ART UNIT	PAPER NUMBER
			3764	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/729,356

**Applicant(s)**

HICKMAN, PAUL L.

**Examiner**

/Glenn Richman/

**Art Unit**

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/88)  
Paper No(s)/Mail Date 3/14/08, 5/2/08, 5/27/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenberg et al in view of Voris.

Greenberg et al disclose a local system including an exercise apparatus having an actuator and an associated local computer fig. 1, said local computer being able to control said actuator fig. 1, a remote system including at least one remote 158 and an internet connection that at least part-time couples said local system to said remote system for data communication between said local system and said remote system 156, such that said local system is interposed between said remote computer and said actuator fig. 1, whereby said remote system can not directly said actuator fig. 1.

Greenberg does not disclose said local computer being able to sense a performance of a user of said exercise apparatus and control said actuator to adjust at least one operating parameter of said exercise device based on said sensed performance.

Voris discloses said local computer being able to sense a performance of a user of said exercise apparatus and control said actuator to adjust at least one operating parameter of said exercise device based on said sensed performance (claims 2 and 3).

It would have been obvious to use Voris's sensing and controlling means with Greenberg, as it is well known as taught by Voris, to sense a performance of a user on an exercise device, and control an operating parameter of the device, for providing an exercise routine.

As for claims 2-8 Greenberg et al further disclose said local system is one of a plurality of local systems, each of which is in at least part-time communication with said remote computer col. 7, lines 19 - et seq., a server system including at least one server computer in at least part-time communication with said remote computer fig. 1, said remote system is one of a plurality of remote systems, and each of which is in at least part-time communication with said server system 162,164, said exercise apparatus further has a sensor, said local computer being able to receive signals from said sensor 108, such that said local system is interposed between said remote computer and said sensor, whereby said remote system cannot directly receive signals from said sensor fig. 1, said local computer is located internally to said exercise apparatus fig. 1, said local computer may include at least a portion of a modified script (local system has a computer, so it is inherent that it "may" include a modified script, said exercise apparatus includes at least one of a bicycle, a rowing machine, a step machine, and a resistance trainer fig. 1, said control may include a resistance setting for said exercise apparatus fig. 1.

Claims 10- are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer (5,645,509) in view of Rawls et al.

Brewer discloses at least one a plurality of exercise apparatuses each having a moveable element for performing an exercise or a mechanism for detecting at least one physical attribute of a user (figure 5 and 6); a local computer 250 associated with at least one of said plurality of exercise apparatuses for controlling an operation of said at least one of said plurality of exercise apparatuses based upon a modifiable script provided by said local computer.

Brewer does not disclose said local computer being adapted to engage in bi-directional communication with other exercise apparatuses of said plurality of exercise apparatus.

Rawls et al disclose said local computer being adapted to engage in bi-directional communication with other exercise apparatuses of said plurality of exercise apparatus fig. 5.

It would have been obvious to use Rawls et al's bi-directional communication with Brewer's device, as it is well known as taught by Rawls, to use a bi-directional communication system between exercise devices, for providing a competition between users.

Brewer discloses said script is modifiable externally to said exercise apparatus abstract, said local computer can communicate with a remote system to provide said remote system with local system data concerning said use of said exercise apparatus abstract.

Brewer does not specifically disclose the received remote system data including at least a portion of a modified script is stored in a read/write memory, however it would have been obvious to store the data in a read/write memory, as it is well known in the art, and as Brewer is continually updating the data.

Brewer further discloses said exercise apparatus includes at least one of a bicycle, a rowing machine, a step machine, and a resistance trainer "As hereinbefore noted, the control console 10 of FIG. 1 may be used with a variety of different exercise machines. If the exercise machine involved is a treadmill, the graphic display 158 would, for example, reflect two lines to indicate speed as well as incline for the several time segments comprising the entire duration of the specific program. The graphic displays reflect a different level of speed and incline for each of the five illustrated programs. For a different type of machine, such as an exercise cycle, the illustration would reflect the degree of difficulty and in turn the incline being experienced by a user if that user were climbing and descending through selected terrain (on a bicycle) throughout the period of time comprising the various segments of the program.", a resistance setting for said exercise apparatus "Referring now to FIG. 2, the first input module 14 functions as an input means and supplies input signals to the chassis 12 which in turn generates a plurality of adjustment signals extending for corresponding plurality of time segments. More specifically, each of the plurality of input signals equates to corresponding plurality of adjustment signals which cause the adjustment means of the associated exercise machine to

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operate to a predesigned level or adjustment to regulate or adjust the movement in the performance of exercise by a user. Thus for example, the adjustment means may be the motor controller and motor for a treadmill to in turn regulate the speed of the motor which drives the belt of the treadmill. Alternately the adjustment means may adjust the tension on a friction strap to resist rotation of a fly wheel of a pedal driven exercise cycle. Alternately yet, the adjustment means may regulate the level of resistance to operation of treadles of a stepping machine or to operation of handles of a rowing machine. Each setting of the adjustment means is maintained for a preselected period of time which is a segment of an entire exercise program. The time segments are all normally selected to be of equal length. However, a user may adjust the length of the segments, if desired."

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/  
Primary Examiner  
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